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NOTES OF THE WEEK

Wrong Name on Summons

An incident in the Southport magistrates' court, reported in the *Liverpool Daily Post,* concerned a mistake in the Christian name of a defendant who did not answer when the name was called. A man present in court said the surname was his, but the Christian name was not, and he objected to any amendment of the summons. For the prosecution, it was stated that evidence could be given that this was the man intended to be summoned, but as the man protested the clerk advised that it might be best to stand the matter over in order that a fresh summons could be issued in the correct name, and this was done.

In view of the alleged defendant's attitude it was no doubt thought well to adopt a course which would meet all possible objections to the form of the summons, but the court might, perhaps, if it had thought fit, have gone on with the hearing, if satisfied that the man was the defendant, on the authority of the decision in *Dring* v. *Mann* (1948) 112 J.P. 270, but that was certainly a stronger case for amendment of the summons than the Southport case.

Truthfulness—and Accuracy

A witness who is trying to tell the truth is doing his best to assist the court, but he may be inaccurate in matters of detail through faulty observation or imperfect recollection. Courts often have to decide between parties and witnesses whom they suspect of wilful mis-statement, but on other occasions it is rather a question of which of two stories, both told in good faith, is the more probable.

The *Liverpool Daily Post* reports observations of Slade, J., at Chester Assizes when deciding an action for damages. The learned Judge found his mind wavering more than once, partly because of "the refreshing fact" that both sides appeared to be honest and all the witnesses were trying to tell the truth. They were dealing with an incident that occurred just five years earlier, and there was plenty of room for failure of recollection after this lapse of time.

The moral surely is that civil proceedings generally need speeding up by some means or other. There are all sorts of reasons advanced for delay, and of course in particular cases, perhaps in this one, the delay is unavoidable, but on the general question the public would like enlightenment. Why, it is often asked, are criminal proceedings, even of the gravest kind, usually brought to a conclusion in a matter of weeks or a few months from the moment of the arrest, while an action concerning not a man's life or liberty but only his property, may not be concluded for years? Beyond doubt, criminal procedure is less complicated, and it would be a good thing if civil procedure could be simplified by some means so that cases could be brought to trial with less delay. Delay may mean loss of witnesses or at all events fading recollection of events.

A Notable Record

Since most magistrates are appointed in middle life or later, there are not many who, when they retire from active work, can look back on 40 or 50 years of service, and now that octogenarians are no longer eligible the chance of such records is less than formerly. The supplemental list claims all when retirement age is reached, and doubtless this is a wise provision of the law, on balance, though the loss of a magistrate who is fit for his work is sometimes regretted.

An outstanding case of long service is that of Sir Geoffrey Mander, who was appointed a justice of the peace for the county borough of Wolverhampton in 1906 at the age of 24, and who served continuously for 50 years. For many years he was chairman, and when the magistrates' courts committee was established he became its first chairman. He was also one of the two representatives for the Midlands Region on the Central Council of Magistrates' Courts Committees. In addition to his work on the Wolverhampton bench, Sir Geoffrey was a member of the Tettenhall (county) bench and sometimes acted as chairman. He also sat as deputy chairman of the Staffordshire quarter sessions, and was elected the first president of the Staffordshire branch of the Magistrates' Association. He served on several committees.

On his retirement many tributes were paid to his long and devoted service. He was one of "the great unpaid," of whom a chief magistrate of the metropolis wrote many years ago, that they were a curious body of men and women who did their work for nothing. In so doing he really paid them a high tribute, for only those who know the courts realize how much time and thought are involved in the work of magistrates. The description "the great unpaid," formerly used rather disparagingly, is better recognized today as the mark of honourable and disinterested service. Fifty years of it is a proud record.

Notice of Fine

Rule 37 of the Magistrates' Courts Rules, 1952, provides for service of a notice upon any defendant who was not present when he was convicted and adjudged to pay a fine or other sum of money. The notice may be served by post, and as a rule there is no difficulty about it.

According to the *Manchester Guardian*, difficulty has been experienced at Walsall about the service of some of these notices on caravan dwellers. The attitude of the Post Office is that, generally speaking, when the caravans are not numbered and there are no central points for leaving the letters, they cannot be delivered, since postmen cannot spend time asking who lives in which caravan and this delays delivery of other letters. The police have in consequence been delivering notices, although they are understaffed and it is not their responsibility to do so.

This is an awkward situation, as such notices must be served before any warrant of distress or commitment can be issued. What the rule says is "The clerk of the court shall serve on the offender notice in writing . . ." It therefore appears that the clerk is responsible for seeing that the notice is served, if not by post, by some member of his own staff or by some person with whom he can make an arrangement. At Walsall, we understand, the matter is being discussed with the General Post Office.

Abode Not Fixed

Our supplementary Note of the Week, "Names on Vehicles," at p. 159 *ante*, was in the press when we received a cutting from *The Western Morning News*. A gypsy woman was summoned at Ilminster for breach of s. 76 of the Act of 1835, in that she had not had her name and address painted on her van. The chairman of the magistrates is reported to have said it was ridiculous to require this of a person who had no address. We suppose she lived in the van itself; that this was mobile, and that it was not laid up for the winter in a place which could be considered to be her "address." We assume also that it was horse-drawn, so that she did not enjoy the privilege given by Parliament to the owners of motor vehicles in 1930.

Certainly it would be harsh to convict a person who had no address, of the offence of not putting an address upon his vehicle: we wonder what the police did about this requirement in the years from 1835 to 1900, when there were more gypsy vans on the roads than there are today, and (we believe) more gypsies who were completely unattached to a fixed address. One way of meeting the chairman's criticism of s. 76, and our own suggestion that the law should be uniform, would be to repeal the requirement of a name and address for horse-drawn vehicles, as was done 27 years ago for motors. The police might not like this, because the old requirement, so far as obeyed, must be of some help to them, when they wish to get into touch with the owner of an inhabited van or a (horse-drawn) vehicle of some other sort which has been involved in an accident. The point about a van dweller or van owner who has no address strikes us as new; if we are right in our conjecture that, as regards gypsies, what has happened is that the law was not enforced, this may be an argument in favour of obtaining uniformity by getting rid of the requirement.

Homosexual Offenders and Sentences of Borstal Training

Before passing a sentence of borstal training a court is required, by s. 20 (7) of the Criminal Justice Act, 1948, to consider any report made by or on behalf of the Prison Commissioners as to the offender's physical and mental condition and his suitability for the sentence. The court is not bound by the report, it need only consider it, *R.* v. *Watkins* (1910) 74 J.P. 382, but it is generally inadvisable to pass a sentence of borstal training if the Prison Commissioners report that the offender is unsuitable for such training, *R.* v. *Tarbotton* [1942] 1 All E.R. 198; 106 J.P. 44.

It has sometimes been questioned whether a young man convicted of a homosexual offence or known to have homosexual tendencies is suitable for such a sentence. The matter was the subject of discussion in the Court of Criminal Appeal in *R.* v. *Gardiner* (*The Times*, February 19). This was an appeal against sentence of borstal training on convictions of gross indecency.

Cassels, J., delivering the judgment of the Court dismissing the appeal, said the Court had obtained information from the Prison Commissioners which corroborated information that they already had, that there was no real objection to a sentence of borstal training in the case of a young man who had been convicted of offences of this kind. The Prison Commissioners considered the training facilities suitable for such persons as the appellant.

Postponed Sentence

When the Court of Criminal Appeal was dealing with the case of *R.* v. *Wall* (*see The Times*, March 5), the Court considered the course adopted by quarter sessions respecting the appellant's son-in-law, who had not appealed. Although the Court could not take action in this matter, the Lord Chief Justice said it did not approve of what had been done.

The court of quarter sessions had postponed sentence for 12 months, and the deputy-chairman had told the man that if he committed another offence during that period he would be dealt with for the offence in respect of which sentence had been postponed, but that if all went well he would be dealt with in such a way as would enable him to regain his character.

The Lord Chief Justice pointed out that the man had not been given bail, he was just let out and the matter was left in the air. An order of conditional discharge or a probation order could have been made, as provided in the Criminal Justice Act, 1948, or the man could have been bound over. Suspended sentence did not yet exist in this country. Lord Goddard referred to the practice sometimes adopted at the Central Criminal Court and certain other courts of adjourning a case to the next sessions of the court for the purpose of having inquiries made, and evidently distinguished this from the course that was being criticized.

Although this is not a decision of the Court of Criminal Appeal, such a pronouncement will naturally be treated as binding upon courts of quarter sessions. The principle involved must not be overlooked by magistrates' courts when considering any question of a long remand on bail.

He Refused to be Cautioned

The police practice of sending a written caution to a person who, they allege, has committed an offence, is intended to be a lenient method of dealing with the "offender," but it is as well that everyone should realize that no one is obliged to accept such a caution if he considers that he has not committed any offence. Many people probably think that it is not worth while to pursue the matter, because they realize that the almost certain result of refusing to be cautioned will be that a summons will be applied for and the case will have to be decided in court.

In *The Birmingham Post* on February 28 a case is reported in which a farmer, a former police constable, was summoned for obstruction under the Highway Act, 1835. He had left his car for five minutes in a high street which he said was 30 *ft.* wide, leaving room for two of the latest double-decker buses to pass without interference. He explained to the court that the case had been brought because, being convinced that he had committed no offence, he had refused to accept a police caution. He argued that it was clear that none of the modern legislation dealing specifically with motor vehicles was applicable to the case and that the Act of 1835 was never intended to penalize a person who left a car in the way he had left his for only five minutes and who did not cause actual obstruction to anyone. The prosecution maintained that five minutes was longer than was reasonably necessary and that to leave the car therefore constituted an obstruction. The case was dismissed. The prosecution presumably had in mind the case of *Gill* v. *Carson* (1917) 81 J.P. 256, in which it was held that there could be an obstruction of the highway, by unreasonable user, without evidence that anyone had been obstructed.

The Thoroughness of Police Inquiries

We have always understood that although in novels the police hero often arrives at the right conclusion by intuition or by brilliant deduction, in real life results are usually achieved by hard work and patient and persistent investigation. An example of this is to be found in a report in the *Daily Herald* of February 23 which records the result of the trial of a man for causing death by dangerous driving, a charge under the Road Traffic Act, 1956, s. 8, which came into force on November 1, 1956. A man was found dying in a road in Kent and it was plain that his injuries had been caused by a car. The only clues were a snapped-off wing mirror and fragments of a windscreen which were lying in the road.

The police thereupon began to visit garages in Kent and Surrey and after 16 days, in a garage at Buxton, some 17 miles from where the accident had occurred, they came to a garage which had repaired a windscreen after the date of the accident. The man who had brought the car in question to the garage was seen and he admitted that he had been involved in an accident. He said that he suffered from a heart complaint which caused blackouts.

He was duly convicted of the offence under s. 8, was fined £200 and disqualified for 20 years. The learned Judge said to him, "In no circumstances should you ever drive again." His age was given as 65.

But for the patient work of the police in going from garage to garage until they found what they were looking for, this case could never have been brought. The search must have occupied many hours of police time, but the result justified the effort and the time spent.

A Drunken Cyclist

A drunken pedal cyclist in modern traffic is undoubtedly a danger to himself, but he is equally a source of potential danger to other road users and may be the cause of other people being killed or injured when a vehicle driver has to make an emergency effort to avoid hitting him. The penalty under s. 12 of the Licensing Act on conviction of the offence of being drunk in a highway or other public place in charge of any carriage is a fine not exceeding 40*s.* or imprisonment not exceeding one month, but the drunken cyclist must now be dealt with, by virtue of s. 11 (1) (*c*) of the Road Traffic Act, 1956, under s. 15 of the Road Traffic Act, 1930, and he is liable to a fine not exceeding £30 on a first such conviction or, on a subsequent conviction, to such a fine or to imprisonment for not exceeding three months. In spite of the increased monetary penalty the new provision is kinder in a way to such offenders since they were liable, under the Act of 1872, to be sent to prison for a first offence. The fact that such offenders have been brought within the ambit of s. 15 of the 1930 Act makes applicable to them the provisions of s. 15 (3) by which a person liable to be charged under s. 15 shall not be liable to be charged under s. 12 of the Act of 1872.

The Western Morning News of February 21 reports a case in which on a charge under s. 15 a defendant was fined £7 with £5 5*s.* costs for riding a pedal cycle while under the influence of drink.

Every Citizen a Policeman

The modern habit of leaving to the police the duty of enforcing the law should not make us forget that we all, as law-abiding citizens, have an interest in that enforcement and, at times, a duty to assist actively in the matter.

An instance of a citizen, in this case a motor driver, properly concerning himself with the enforcement of the law is reported in the *Liverpool Daily Post* of February 20. This motor driver saw a boy driving a five-ton lorry. He realized that the boy appeared to be too young to be lawfully driving such a vehicle and he stopped him and took him to a police station. As a result the boy was charged with stealing property worth 15*s.* from a garage and with taking and driving away the lorry without the owner's consent. He was seen, by the motor driver, driving the lorry out through the gates of the premises in which it was kept, and when he got out of the lorry to shut the gates of the premises the motor driver took him to the police station.

The chairman of the bench said to the motor driver, "I wish to commend you on what you did. You probably saved this boy's life." He might have added that it was possible that he had saved the lives of other people whom the boy might have put in peril.

Proposed Amendments of Construction and Use Regulations

In two circulars, each dated February 25, the Minister of Transport and Civil Aviation invites comments on proposals to make changes in the regulations governing the overall length of public service vehicles (reg. 6) and the overhang of heavy motor cars (reg. 38) and to introduce a requirement for the fitting of a guard in the space between the front and rear wheels of goods vehicles where there is a clear space of 2 *ft.* or more between their nearest points.

The amendment proposed to reg. 6 is to extend to four-wheeled double-decked public service vehicles registered before July 1, 1956, the provision which allows to those registered after that date a maximum length of 30 *ft.* The present maximum for the older vehicles is 27 *ft.* It has been suggested to the Minister that such vehicles could be altered, by fitting new bodies or by extending existing bodywork, and that

appreciable economies in operation and in capital expenditure would result. It is considered, having regard to various matters set out in the circular and to the control which can be exercised by certifying officers and by the imposition, by the Traffic Commissioners, of special conditions as to the length of vehicles to be used on any particular route, that the request might safely be granted.

The proposed increase in the overhang of heavy motor cars is to allow the provision of a short wheel-base chassis for certain new fire-fighting appliances whilst at the same time giving sufficient room at the rear for the fitting of the pumps there. This cannot be done without exceeding the present permitted overhang. The extension would be limited to such vehicles.

This circular deals also with a proposal to make a minor amendment in regs. 39 and 44 to prevent those regulations (which deal, respectively, with brakes on heavy motor cars and on motor cars) having an effect, so far as works trucks are concerned, which was never intended. A further amendment to reg. 44 (5) is proposed to permit the use of "inboard" brakes, which are said to be brakes which do not act directly on the wheels but on the shafts leading to the wheels. This circular is numbered VRT. 4/1/090.

The proposal to introduce guards between the wheels of goods vehicles is prompted by a desire to neglect nothing which may help to reduce the number of serious accidents, particularly to children and cyclists. The point of the proposal is obvious. The circular is numbered VRT 4/1/021.

The Minister invites comments by March 30 on the former circular and by May 15 on the latter. Communications should be addressed to the Secretary, Ministry of Transport and Civil Aviation, Berkeley Square House, London, W.1.

A Wasted Effort

We have written before about medical tests for drunkenness, and our readers will be aware that one of the points which a doctor tends to stress in giving evidence in "drunk in charge" cases is that the result of his examination showed that the defendant's powers of co-ordination were markedly affected. It is interesting to read, therefore, in *The Birmingham Post* of February 26, of a defendant on such a charge who successfully performed what would appear to be a quite difficult feat of co-ordination when he was at the police station. Five matches were placed on the station counter and he picked them up using only the tips of the fingers and thumbs of both hands. Without having had any alcohol we have not found this easy to do. The defendant having done it, challenged police officers and the police surgeon to emulate his feat. The report does not record whether they accepted the challenge. The way, however, would seem to have been open for an interesting cross-examination of the doctor on this question of co-ordination, but unfortunately the defendant neglected the opportunity and pleaded guilty to the charge. We are not told what were the other compelling symptoms which induced him so to plead after having triumphantly demonstrated his power to co-ordinate hand and eye. In the result he was fined £25 with £5 5*s*. costs and was disqualified for a year. Could it have been that this was a trick which he could perform only when he was not quite sober ?

Cleaning the Car

It is no uncommon sight to see a motor car being cleaned in the street. Nowadays there are many car owners who have no garage and who wash their cars in the street outside their houses. We spoke in these Notes some years ago about two young women from overseas, who were stated in the newspapers to be earning money for their travels by cleaning cars left at the kerbside, and we now read that a man conceived the idea nearly 10 years ago of cleaning cars where they were parked in the West End of London, and built up a substantial connexion. Now, according to the *Daily Express*, he has been told, presumably because of a complaint, that he is offending against the Metropolitan Police Act, 1839, and he fears he will have to go out of business.

Section 54 of the Act, with the marginal note "prohibition of nuisances by persons in the thoroughfares," deals, *inter alia*, with every person who within the limits of the Metropolitan Police District, in any thoroughfare or public place shall to the annoyance of the inhabitants or passengers clean make or repair any part of any cart or carriage, except in cases of accident where repair on the spot is necessary. The maximum penalty for an offence is 40*s*.

Where the Town Police Clauses Act, 1847, is in force there is a rather similar prohibition in s. 28, but with an important difference. A person may not, in any street to the obstruction, annoyance, or danger, of the residents or passengers, make or repair any part of any cart or carriage except in case of accident. The word "clean" does not appear here. Under the London Act there must be evidence of annoyance, though it may be only one person proved to have been annoyed. Under the provincial Act there must be obstruction, annoyance, or danger. Danger will be exceptional; as regards obstruction, *see* the reference to "residents or passengers," but the same considerations presumably apply as under other provisions of the Act of 1847, which mention this, or under the Highway Act, 1835, with which we dealt at length at 120 J.P.N. 258, 277, 295, or the Motor Cars (Construction and Use) Regulations, 1955, S.I. No. 482, as to which *see* 120 J.P.N. 97. In brief, it is not necessary to prove that any actual passenger was obstructed, if there is obstruction of the highway which would have interfered with a potential passenger.

Left for longer than is necessary, in an objective sense (which does not mean "necessary for the purpose of waiting" or otherwise for the owner's convenience) the car offends against several statutory provisions anyhow, whether or not any person is proved to be obstructed: we have said this almost *ad nauseam*. Admittedly, there are occasions when it may legitimately stand, and nobody could object if the owner or driver of a car which was legitimately standing in the street took the opportunity to go over the glass or the panels with a polishing leather, but surely it is another matter when a person (standing his car where he has no right to stand it for the purpose) brings out a bucket and a mop.

All this is bad enough when the cleaning of cars is confined to the owners. It is worse, and surely wrong in principle, when carried out commercially. It is surprising (if true) that a trader has been allowed to do it in the West End of London for 10 years, building up a substantial business connexion. No doubt he and his customers would say that he was meeting the convenience of many people, but it has long been settled that this is not a defence to proceedings for obstruction of the highway: *R.* v. *Ward* (1836) 4 Ad. & E. 386; *Burley* v. *Lloyd* (1929) 45 T.L.R. 626. At best the section of the public which is benefited is small; the case is worse, in that respect, that the jetty for passenger boats built out in navigable water, as in *R.* v. *Ward*, or the coffee stall upon a highway, serving all and

sundry, about which we advised some years ago that it was an illegal encroachment if left for a long time.

This misuse of the public way is not one which can be stopped in practice except by the police: neighbours and passers-by are not going to set the law in motion. But it clearly is a misuse, one degree worse than the parking in unauthorized places of which we have so often spoken.

The Cost of Paying Wages

Before the last war many county councils paid their roadmen by cheque: a number also paid school caretakers, cleaners, cooks, maids, groundsmen and other manual workers in the same way. After the war the trade unions pressed successfully for payment in cash to which their members were legally entitled by virtue of the Truck Act, 1831. The unions also attempted to secure payments at weekly intervals and were successful in many cases.

Payment of wages weekly in cash to employees stationed at numerous points over a large area is an expensive business, particularly since the increase in the price of registered envelopes. The cost of registered envelopes if 2,000 workers are paid weekly is about £7,000 *per annum*.

It is not surprising therefore, that the local authorities hoped for the success of Mr. Graham Page's Cheques Bill which would have effected the necessary amendment of the Truck Act. Their hopes were dashed however, the representatives of the Trade Union Congress opposed the clause on the grounds that although it proposed to do no more than restore the original position under the Truck Acts which allowed payment by cheque by agreement, it might lead to undesirable pressure on workpeople, the retail distributors' representatives were, on balance, opposed (the ordinary local shop would be quite unable to cope with large numbers of cheques), and some employers were not enthusiastic, seeing little prospect of their employees, as one put it, giving up their Saturday mornings to queue at banks which in any case were mostly situated so far from their homes and places of work that substantial bus fares would have to be paid to get there.

Payment by cheque thus being impossible other ways of reducing expense have been investigated. Some authorities obtained quotations from insurance companies for sending unregistered letters through the post and we understand that these showed an appreciable saving compared with the purchase of registered envelopes. Unfortunately, experience of this system has not been favourable, losses in transit being continually incurred, and we are not aware of any authority which is at present using this method.

With regard to the actual handling of cash two points are worth considering. The first is to make the greatest possible use of the new £5 notes, thus reducing the cost of labour in putting up wages. The second, suggested by a correspondent in the *Financial Times*, is that wages should be paid to the nearest £, odd money up or down being carried forward to the next pay day. This idea has obvious advantages, for example the quick and easy making up of wage packets and the complete abolition of the calculation of cash requirements in terms of coinage. The system has been used with success for a number of years by the Port of Bristol Authority.

KEEPING THE REGISTER

By F. G. HAILS, *Clerk to the Dartford Justices*

On p. 6 of *The Magistrate*, published in January, 1957, there is an interesting article on a mistake in the compilation of the court register, which appears to have arisen out of a misunderstanding between a magistrates' court and its clerk. This possibility was not dealt with in our article on Register Entries in 120 J.P.N. 705, and it may be interesting to consider the points raised by the contributor to our contemporary. He says: "it is perhaps somewhat surprising that the Magistrates' Courts Act and Rules do not lay down fairly and squarely on whose shoulders the responsibility for the accuracy of the entries in the register should lie." It is true that there is no express provision but, it is submitted, the matter is dealt with by implication, for the Magistrates' Courts Rules, 1952, r. 54 (1) read: "The clerk of every magistrates' court shall keep a register in which there shall be entered:

(*a*) a minute or memorandum of every adjudication of the court;

(*b*) a minute or memorandum of every proceeding or thing required by these rules or any other enactment to be so entered."

The rule goes on to provide for the form of the register, for the proper entry of the nature of the offence, and of the date of the offence, and then (3) provides:

"The entries shall be signed by one of the justices, or the justice, before whom the proceedings to which they relate took place" and this is followed by a provision for the entry by the clerk where the proceedings took place elsewhere than in a petty sessional court house.

This is not all, for the Summary Jurisdiction Act, 1879, s. 31 (1) (ix), dealing with the appeals to quarter sessions from decisions of magistrates' courts reads: "the clerk of the peace shall send to the clerk to the court by whom the decision appealed against was given, for entry in his register, a memorandum of the decision of quarter sessions. . . ." Moreover, the Magistrates' Courts Rules, 1952, r. 34, which deals with the revocation, revival, discharge, alteration, or variation of orders enforceable as affiliation orders by courts other than the court which made the order, reads (8) "Where a magistrates' court other than the original court in determining a complaint to which this rule applies, revokes, discharges, revives, alters or varies the order:

(*a*) the clerk of the first-mentioned court shall forthwith send by post to the clerk of the original court an extract from the register containing the minute or memorandum of the determination.

(*b*) on receipt of the extract, the last mentioned clerk shall enter the minute or memorandum in his register."

Of these three enactments, two enjoin the clerk to make the entries in *his* register, whilst the first lays upon him the duty of "keeping" the register. In the *Concise Oxford Dictionary* the transitive and intransitive verb "to keep" has assigned to it many meanings, but those apposite to the present point are as follows: first, "retain possession of, not lose" and secondly "maintain (diary, accounts, books) by making requisite entries." Whilst it is clear that the clerk must retain possession of and not lose the court registers, it seems equally clear that he must make the requisite entries in them.

This argument is supported in contrasting the directions as to keeping the court registers which existed before the Magistrates' Courts Rules, 1952, came into force with the present obligations, which we have already quoted. The Summary Jurisdiction Act, 1879, s. 22 (1) reads: "The clerk of every court of summary jurisdiction shall keep a register of the minutes or memorandums (*sic*) of all convictions and orders of such court and of such other proceedings as are directed by rule under this Act to be registered, and shall keep the same with such particulars and in such form as may be from time to time directed by rule under this Act." So far, the later legislation makes no difference, but when the provisions made by s. 22 (4) are considered the change is apparent: "The entries relating to each minute or memorandum shall either be entered or signed by the justice or one of the justices constituting the court by or before whom the conviction or order or proceedings referred to in the minute was made or had . . ." The subsection goes on to deal with proceedings elsewhere than in a petty sessional court house, and is similar to the provisions under the 1952 Rules. It is hardly necessary to point out that whereas the earlier Act provided for the entries to be *made or signed* by a justice, the new rules provide only that he shall *sign* them.

Of course neither the repealed nor the new legislation deals with the responsibility, but surely this must rest primarily with the clerk, who has to maintain the register and make the entries, but ultimately with the justice who signs, for it is not his duty to affix his name blindly, but to see that the clerk has kept an accurate record.

In our earlier article we drew attention to some of the complications of the register, complications which we think render the task one for the magistrates' clerk rather than the lay justice, who should nevertheless make sure that his sentence has been properly set down, even if he has to call on the clerk for an explanation of why it has been done in a certain way. A number of clerks wrote to us with various ideas, some of which were new to us, all of which were interesting. The subject is indeed an important one, for in the Dartford Division there were over 11,000 register entries made last year, and even if this is probably above the average it is well below some of the big divisions of Middlesex and Essex, to say nothing of the cities and county boroughs of the Midlands and the industrial North.

OXFORDSHIRE JUSTICES OF THE PEACE IN THE SEVENTEENTH CENTURY

By ERNEST W. PETTIFER, M.A.

(*Concluded from p.* 146, *ante*)

Amongst the accounts for repairing the county bridges which came before the justices at their quarterly sessions from time to time are several references to repairs carried out to Magdalen Bridge, in Oxford. A small repair necessary in 1686 seems to have been merely the pointing of the masonry, but in 1688 work was done not only on the arch, but also on the carriageway and the parapets. The following year the arch broke down completely, and, after "ridding and cleansing the river" (of the fallen masonry), a considerable amount of materials had to be conveyed to the site, such as 250 *ft.* of freestone, costing with carriage 4*d.* per *ft.*, 10 quarters of lime, 30 loads of gravel, and 10 loads of pebbles. Carpenters had to be employed to erect the centre boards before the masons could commence their work, yet the whole job was carried through in four weeks. All accounts for work on Magdalen Bridge were certified by the Vice-Chancellor of the University. The masons earned 1*s.* 8*d.* per day and the labourers 1*s.* per day, and, from the Magdalen Bridge and other bridge charges it is evident that Robert and William Robinson usually had the work allotted to them. A younger brother, Charles Robinson, worked for them as a labourer, and there were evidently family associations amongst the other labourers. Will and Michael Emson were father and son in all probability, the father earning 1*s.* 1*d.* a day and the son 8*d.* Apart from the Robinson group, there were other families of masons in Oxfordshire, *e.g.*, the Osmonds of Burford, William, Jonathan and Richard, but William Robinson appears to have been trusted by the justices, and, when matters demanded urgent attention, to have acted upon his own initiative. A letter from Mr. Francis Tyrrell to his brother justices bears this out. "This bearer, William Robinson," he wrote, "tho he had no orders hath worked several days at Shottover hill in repairinge and fillinge of holes and opening the trenches for the water to pass. I have seen it and thinke that it is butt reasonable thatt he should be payed for his paynes, it being no great matter that he demanded. If Sir John Curzon be at the Bench he hath seene it as well as myselfe."

The justices in sessions appear to have taken over as one of their many administrative duties the oversight of the bridges in the county. Two justices by direction of quarter sessions inspected Dorchester bridge in Oxfordshire in 1687, and found one arch gone and 40 *ft.* of the retaining wall of the highway leading to the bridge also completely collapsed. They engaged four masons and three labourers to do the necessary work, and later certified the account, £32 5*s.* 10*d.* for the completed work.

The highway surveyors, local amateurs with no training or experience, were given the oversight of the highways. Usually the work of filling in the potholes was done in one week of the year, when the farmers furnished the carts and teams, and the local people, willingly or (in most cases) unwillingly, supplied the labour. In 1687 at Dorchester the surveyors came to an agreement with the local inhabitants to carry out necessary work themselves, probably hiring men for the purpose, but, having incurred costs of £11 to £12, the parishioners ran off their agreement that the bill should be defrayed "by a yard land tax, and also a tax upon other persons inhabiting within the parish but not having lands there." The aggrieved surveyors petitioned quarter sessions and four justices received the rather curious instruction "that they shall examine and allow as they shall see cause and pay or be bound over!"

The highway surveyors were constantly engaged in dealing with the problem of keeping the highways clear of obstructions; when they were informed of, or themselves found, such an obstruction, they could report the matter to their local justice who could report direct to his brother justices in sessions, or they could report to the high constable who would put in a presentment against the alleged offender or offenders at the next quarterly sessions. A presentment from either the surveyor or

the high constable of Pirton Hundred in 1687 illustrates the types of complaints the justices might have before them at their sessions. It runs thus:

"I present Gregory West of Watlington, for seting post and Rayles upon a pack and prime way" (a packhorse way), "Ladeing to a feild called Clayhill feild and a common called the Fleete in the Parish of Watlington."

"I present Gregory West for laying soyle and muck in a streete or Layne called Hog Lane, being a comonanewcance" (a common nuisance !).

"I present Thomas Davis of the same towne for the like offence."

"I present Richard Hester, Husbandman, of Watlington for incroachinge and straighting the King's Highway in a feild called Clayhill feild leading to Thame."

There must have been hundreds of problems in each county for the justices to solve. When the ill-made roads collapsed into pits, filled with mud in winter, the carriages, waggons and horsemen were forced upon the neighbouring land, and it soon became a question as to where the original highway actually lay. The charge against Richard Hester, above, for "straightening" the King's highway, in all probability, was the case of an adjoining owner or tenant endeavouring to recover his lost land. The justices were in no enviable position, for if they allowed the highway to be "straightened," what was left of the highway might be completely impassable at certain times. But county justices of the seventeenth century were resolute men, not easily deterred by what were, in their period, merely day-to-day difficulties.

The editor of these Oxfordshire records found many documents bearing upon the transportation of convicts overseas, and she found incontestable evidence that so early as 1617 Oxfordshire prisoners were already being transported. In 1598 the Elizabethan Act had formulated the idea of banishment from the realm for rogues, vagabonds and sturdy beggars, but had left to the Privy Council the duty of naming those parts beyond the seas which were to be used for the reception of the banished men and women. There was a delay of some years on the part of the Privy Council, but on September 16, 1603, the council made the required assignment, their list covering "The New Found Land, the East or West Indies, France, Germanie, Spaine, and the Low Countries or any of them." In naming these places it is clear that the Privy Council had in mind only the idea of banishment, and not of penal servitude, and, in fact, the 1589 Act had given to the justices the power to choose between committal to the galleys (or convict ships), or banishment overseas. Letters sent to the Judges of Assize were in similar terms and gave the choice between the galleys and banishment. In 1617 Virginia was added to the list, the demand for labour there having become pressing, and (the Order of the Privy Council of March 24, 1617, recited) "His Majestie" (the illustrious James I) "out of his singular Clemencie and mercie" had decided that it would be better to correct than to destroy, and further, that "some of them might live and yealde a profitable Service to the Commonwealth in partes abroad where it shall be found fitte to imploye them." So the traffic in human souls and bodies was inaugurated, and the procedure laid down.

At the end of the lengthy document appears the name of "John Browne, now prisoner in His Majestie's Castle of Canterbury," who, in all probability, was the first of that army of exiles sold into slavery for their crimes. He was placed in the custody of Sir Thomas Smith, knight, Governor of the East India Company, for safe conveyance to the East Indies "or other partes beyond the Seas as he shall direct." In July of that year a further Order in Council reprieved Christopher Potley, Roger Powell, Sapcot Molineux, Thomas Middleton and Thomas Crouchley, prisoners in Oxford gaol, and ordered their delivery to the same merchant, for transportation to Virginia.

These events, as we have seen, took place in 1617. By 1661 the system had so far developed that the London Company of Merchants could venture to approach the Privy Council direct to ask (put in plain terms), if they could make a selection from the prisoners then under sentence in London gaols, for shipment to Jamaica! The Privy Council passed the request to the Recorder of London. The merchants waited upon the Recorder at the Assizes at Kingston-on-Thames on July 23, but "the Recorder being out of towne and therefore not able to certifie to each man a particular case, did think it expedient that *all such persons as are now in Newgate under condemnation, and not for murder, should be transported*, the Merchants undertaking to keep them from returning for the space of tenn years at the least."

Upon this certificate, containing no names, the Privy Council issued a blank warrant to the Lord Mayor and Sheriffs directing them to hand over to the merchants "all convicted prisoners except those condemned for murder or burglary." Whether this distinctly casual method of carrying out their duties by the Privy Council was exceptional cannot be ascertained, but the next year the council called upon the Judges of Assize for returns from each Assize of all persons convicted of felony and, in the Judge's view, suitable for pardon and reprieve, and for transportation. From the Spring Assizes of that year the names of 19 men and women were sent in. But there is no doubt that in these later years the council were not carrying out their duty to examine each case on behalf of the Crown. A certificate of four Westminster justices of August 24, 1663, shows clearly to what uses the system was being put. After reciting that four men and two women had been committed to their quarter sessions for several felonies and misdemeanours, the certificate went on "*and for want of proofe not found guilty of the Crimes laid to their Charge*, have been remitted to prison as sturdy and incorrigible persons until they find sureties," etc. While these four Westminster worthies may have been acting within their legal powers in requiring prisoners, found not guilty of crimes, to find sureties as homeless and suspicious persons, it is difficult to find any legal warrant for the suggestion, which followed, that all the six persons should be transported to the plantations.

How far the statutory procedure for dealing with felons by way of transportation had slipped away from quarter sessions and Assizes, from Privy Council and the Crown, is illustrated by the proceedings before Chief Justice Jeffreys at the Bristol Assize of September 1685 (as the editor points out, at the close of "The Bloody Assize" in the West). Fresh from the committal to the plantations of hundreds of the unfortunate miners and labourers who had supported Monmouth, the Chief Justice learnt, by some complaint brought before him, that the Mayor and Aldermen of Bristol had built up a quite lucrative but entirely unauthorized traffic in the bodies of those brought before them, whether felons or lesser offenders. Terrifying men and women brought before them, as justices, by threat of hanging, they had compelled many persons into acceptance of transportation. "Good God! Where am I?" bellowed Jeffreys, "Magistrates can discharge a felon or a traitor provided they will go to Mr. Alderman's plantation in the West Indies!" In a letter to the King the same night, Jeffreys wrote "I this day committed Mr. Mayor of this Citty Sir. Wm. Hayman and some of his Brethren the Aldermen for kidnappers and have sent my Tipstaffe for others equally concerned in that Villainy."

But we have wandered rather a long way from Oxfordshire and must return to our county to glance very shortly at some of the less important proceedings of the justices in their sessions. When Henry Saunders, a Culham labourer, directed the contents

of a bucket of water over a too-talkative neighbour, Mrs. Cecilia Acard, did he feel that he had had good value for the 3*s.* 4*d.* he had been ordered to hand over to the sheriff as a penalty? Widow Walker of Bicester accused by "several wicked and malicious persons" who envied her reputation and good name put in a forceful petition to their worships, "A witch," protested Widow Walker of Bicester, "an odious name your petitioner utterly abhors and detests, and all the works of the devil!" "Let your petitioner be searched," she wrote, "by foure and twenty honest sober judicious matrons to make report of their opinions at the next Sessions." Whether the justices were somewhat daunted by the responsibility for finding twenty-four ladies possessing these qualifications is not recorded, but they did take the easier course of handing the petition to the two next justices.

Edward Davis, enjoying the night air as he rested on a bench in a village street at 3 *a.m.* discovered that there was a parcel lying on the other end of the bench. Deeply anxious to restore it to its unknown owner Edward set off, but found himself in the strong grip of the village constable, who persuaded him to come along and have a talk with the local J.P. The magistrate, evidently much interested in Edward's simple story, wrote it down, and, the parcel having been opened, listed the contents—"One black hood, one whit hood, one Coller band, one looken glass, a Child shift, a Child apern, one lass pinner, one Lass dress, one queafe (coif), one child's bond (flannel band) and one child's cappe." At the end of the statement he wrote, "All these things the said Edward Davis doth confess he found them about three of the clock this morning aforesaid. Robert Dashwood." Ultimately, this statement must have been sent to the clerk of the peace, but whether Edward accompanied it, or whether the J.P. warmly shaking him by the hand, sent him forth to resume his travels, alas! remains untold!

Another unfinished story is that of Bridget and Jane Tanner, spinsters of "Duckleton." These two ladies apparently entered a neighbour's field in the night for the purpose of milking his cows, and, we may hope, with the charitable idea of saving him the trouble of doing so in the morning! Caught in the act and brought before Sir Littleton Osbaldiston, they were bailed to appear at the next sessions, with two sureties in £40 each. The erring spinsters, sad to relate, failed to put in an appearance at the sessions, their non-appearance involving each surety in a loss of £40.

Throughout the seventeenth century, Oxfordshire quarter sessions had no permanently appointed chairman. A note quoted from the Memorials of Bulstrode Whitelock, a barrister of the Oxford circuit, refers to an occasion when he had to take the chair unexpectedly—"1635. At the Quarter Sessions at Oxford I was put into the Chair at Court though I was in coloured clothes, a sword by my side, and a falling band which was unusual for Lawyers in those days, and in this garb I gave the charge to the Grand Jury."

And, to end these haphazard selections from the interesting proceedings of the court of quarter sessions in Oxfordshire, let us conclude on a peaceful and pleasing note—the state of that orderly and well-behaved town of Chipping Norton in 1687. Under the hands of Richard Ingpan and John Hull, the constables, it is on record that there were no rogues, nor any willing to shelter such; that watch and ward had been faithfully kept; no tippling, drinking or unlawful games, nor any drunkards or users of profane oaths; no butchers carrying on business on the Lord's Day, nor any travellers on that sacred day; no poachers nor unlawful dealers; highways and bridges in perfect order, and abundance of willing labour for their upkeep; no waggons, carts or carriages drawn by more than five horses. How delightful life must have been in Chipping Norton in 1687!

WHAT IS A WHOLE?

Under the impulse of politics Parliament changed its mind between 1947 and 1954 about the proper way to deal with the value of undeveloped land, and in so doing left at least one pretty problem for the legal advisers of the Central Land Board and of public authorities acquiring land. We dealt at 120 J.P.N. 178 with the exception in s. 52 (2) (*b*) of the Town and Country Planning Act, 1954, from the requirement of refunds from public authorities acquiring certain land, namely that a refund need not be made to the Central Land Board where the authority had before November 18, 1952, acquired an interest in land for the purposes of the development of any area as a whole. Since dealing with the point last year, we have again been asked to advise, both upon housing cases and upon a case where a big area had been bought for the disposal of refuse. It will be remembered that the opinion of the Central Land Board is that an area is only to be regarded as acquired for development or redevelopment as a whole when it has been acquired under the Town and Country Planning Acts themselves, or for the purpose of redevelopment under part III of the Housing Act, 1936. The excepting words do not, according to this opinion, avail a local authority which has acquired an area, however large, for the purpose of part V of the Housing Act, 1936, or for the purposes of some other Act such as the Public Health Act, 1936, or the Education Acts. Although there had been argument about the correctness of the Central Land Board's contention, our information is that until the latter part of last year the legal advisers of local authorities had not seen their way to contest it. At the beginning of this year, however, we were told that the question might be reopened, and we have thought it worth while to go into it afresh.

Although the question now arises as one of interpretation of the law as it stands, a glance at the history of the subsection is interesting. The White Paper Comd. 8699 of 1952 indicated in para. 47 that payment of compensation by the Central Land Board under part I of the Act of 1954, to persons from whom land had been acquired compulsorily at existing use value, would call for adjustments between the Exchequer and the acquiring authorities. It is understood that in 1952 and 1953 there was an intention in Government circles to recover from local authorities the benefit which they had received from acquiring at existing use value, in all cases where the Central Land Board had paid out money to the owner, but that, before the Bill for the Act of 1954 was published, discussions took place between the Government and the associations of local authorities, and the present form of s. 52 (2) of the Act represents the compromise which was reached in those discussions.

Taking para. (*b*) of that subsection, with which we are here concerned, do not doubt that the words "development" and "redevelopment" are wide enough to cover the sort of use which a local authority will make of any land acquired under the Public Health Acts or the Housing or Education Acts, but, upon fresh and careful consideration of the words in question, we have come to the conclusion that the contention of the

Central Land Board would probably be upheld by the courts. The crucial questions are what is meant by the word "area," and secondly by the three words "as a whole." The word "area" must, it seems, connote something which is not the same as the borough or district. So far, it could be the land used for depositing refuse, building a school, or laying out a housing estate. Every block of land bought by a local authority is presumably intended to be developed as a whole, because even where a local authority has power to buy land in advance of requirements it must when it applies for sanction of the necessary loan be able to show what the purpose is. The words must, therefore, have been used by Parliament with some limiting intention. The same words occur in s. 83 of the Town and Country Planning Act, 1947, and it is reasonable to suppose that this was in the mind of the legislature when s. 52 of the Act of 1954 was enacted. The words occur also in para. (*d*) in s. 34 (1) of the Housing Act, 1936, where the land is to be defined on a map as an area to be redeveloped as a whole. We find it almost impossible to attach full meaning to the words "as a whole" in s. 52 (2) (*b*) of the Act of 1954 otherwise than by saying that "the area as a whole" must, in our opinion, be something bigger than a piece of land bought under the normal statutory powers, for everyday purposes of local government. We cannot readily attach a meaning to the whole phrase, in the context we are considering, except by relating it to land acquired under the Town and Country Planning Acts themselves, and land acquired under ss. 34 to 36 of the Housing Act, 1936.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Harman, J.)
February 22, 26, 27, 28, 1957
RE F. (AN INFANT)

Adoption—Consent of parents—Reasonable withholding—Parents' consent given by deed—Withdrawal before making of order—Adoption Act, 1950 (14 *Geo.* 6, *c.* 26) *s.* 3 (1) (*c*).

ORIGINATING SUMMONS.

The male applicant was a wealthy planter, formerly domiciled and residing in Jamaica. He and his wife, the female applicant, met there the parents of a child, Margaret, who were missionaries. Margaret was born in June, 1950. In 1951 her mother had a nervous breakdown, and she and her husband went to the United States, leaving Margaret and two older children in the care of the applicants. In 1953 the parents returned to Jamaica, took a house, and lived there with two older children. Margaret remained with the applicants and was still with them. In 1954 the applicants entered into a deed with the parents regarding the adoption of Margaret which provided, *inter alia*: "The adopting parties will immediately upon establishing their residence and domicil in England apply to the High Court of Justice in England . . . for an adoption order authorizing them to adopt the infant pursuant to the Adoption Act, 1950, and any amendment thereof, and the parents do and each of them doth hereby expressly waive any right which they may have to be made parties to or be given notice of the said intended application and hereby expressly consent to the making of such adoption order as aforesaid in favour of the adopting parties." In August, 1954, the applicants came to England and acquired a domicil here. In 1956 they applied to the High Court for an adoption order. The parents obtained leave to oppose the proceedings and to file evidence. The applicants contended that they had changed their position on the faith of the promise contained in the deed and that the parents were not entitled to oppose an adoption order.

Held, the parents were not estopped by the deed from refusing their consent to the adoption order which, in the circumstances, was not unreasonably withheld, and, therefore, the application must be dismissed.

Counsel: *Plowman, Q.C.,* and *J. A. R. Finlay,* for the applicants; *H. B. Grant* for the parents; *T. A. C. Burgess* for the *Official Solicitor.*

Solicitors: *Hyman Isaacs, Lewis & Mills; Petch & Co.; Official Solicitor.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

(Before Wynn-Parry, J.)
BERRY *v.* ST. MARYLEBONE CORPORATION
February 22, 1957

Rating—Charitable organization—Organization concerned with advancement of religion, education or social welfare—Theosophical Society—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 & 5 *Eliz.* 2, *c.* 9), *s.* 8 (1) (*a*).

ADJOURNED SUMMONS.

The Theosophical Society in England was a component national society of an international society and was not established or conducted for profit. One of its main objects was "to form a nucleus of the universal brotherhood of humanity without distinction of race, creed, sex, caste or colour." The explanation of this object, which the court accepted, was "to form an ever expanding group of persons who are aware of the universal brotherhood of man which is implied by the Fatherhood of God and who believe in working for the diminution and final abolition of all intolerance and discrimination relating to race, creed, sex, social class and colour." On the question whether the society was an organization the main objects of which were "concerned with the advancement of religion, education or social welfare" within s. (8) (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955.

Held, the object of the society was not solely for the advancement of religion and education and would justify activities that could not be considered within the term "social welfare" which connoted the provision of benefits or facilities tending directly to improve the health and condition of life of the class of persons concerned.

Counsel: *Honeyman, Q.C.,* and *Taverne,* for the plaintiff (suing on behalf of the society); *Cross, Q.C.,* and *J. L. Arnold* for the corporation.

Solicitors: *Gibson & Weldon,* for *Berry & Berry,* Tunbridge Wells; *Sharpe, Pritchard & Co.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Staple, Cassels, Gorman and Hinchcliffe, JJ.)
R. *v.* HALLAM
February 25, 1957

Criminal Law—Explosive substance—Knowledge—Onus of proof on prosecution—Explosive Substances Act, 1883 (46 & 47 *Vict., c.* 3), *s.* 4.

APPEAL against conviction.

The appellant was convicted at the Central Criminal Court before the Recorder of London of knowingly having in his possession or under his control an explosive substance in such circumstances as to give rise to a reasonable suspicion that it was not in his possession or under his control for a lawful object, and he was sentenced to three years' imprisonment. The recorder in his summing-up directed the jury that the prosecution must prove that the appellant knew that he had the substance in his possession, but that it did not matter whether he knew that it was explosive. It was contended for the appellant that that amounted to a misdirection.

Held, that the direction to the jury was a misdirection, as the prosecution were required to prove both that the appellant knew that he had the substance in his possession and also that he knew that it was an explosive substance, though in many cases the jury, once they were satisfied that the substance was in the prisoner's possession in such circumstances as to give rise to a reasonable suspicion that he did not have it in his possession for a lawful object, would infer the second requisite. [In the present case, the Court were satisfied that there had been no substantial miscarriage of justice, and they would, therefore, apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and affirm the conviction.]

R. v. *Dacey* [1939] 2 All E.R. 641 not followed.

Counsel: *Gardiner, Q.C.,* and *Brendan J. Shaw,* for the appellant; *Sir Harry Hylton-Foster, Q.C.* (*S.-G.*) and *Buzzard,* for the Crown.

Solicitors: *Wilkinsons; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

CADE *v.* CADE

January 30, 31, 1957

Husband and Wife—Cruelty—Desertion—Course of conduct amounting to cruelty causing spouse to leave matrimonial home.

APPEAL from justices.

The parties were married in 1951. The wife left the husband in September, 1956, and later caused a summons to be issued against him alleging, among other things, that he had been guilty of persistent cruelty to her and had deserted her. The justices accepted the wife's evidence, found the complaints of persistent cruelty and desertion proved, and made a separation order in the wife's favour. On appeal by the husband it was contended (i) that the husband's conduct could not in law amount to cruelty as there was no intention to injure the wife, and (ii) that the particulars of alleged cruelty were really particulars of desertion and that desertion could not be an ingredient of cruelty.

Held, the justices were entitled to find the complaints proved since (i) the husband had, knowing the wife's condition, persisted in a course of conduct in spite of her objection to it and indifferent as to its effect on her, and (ii) the particulars and evidence of cruelty could be adduced by the wife in support of her charge of constructive desertion.

Per LORD MERRIMAN, P.: I do not accept the view that desertion cannot be cruelty. In my opinion, it does not in the least follow from the fact that, by contrast with cruelty, the remedy of divorce is only given for desertion which had lasted for three years before the presentation of the petition, that desertion *per se* cannot be cruelty.

Per COLLINGWOOD, J.: It is impossible to draw the line between conduct which constitutes expulsive conduct in a charge of constructive desertion and conduct which constitutes an ingredient in a charge of cruelty.

Counsel: *Jupp*, for the husband; *K. B. Campbell*, for the wife.

Solicitors: *Smiles & Co.*, for *Mossop & Bowser*, Wisbech; *Gardiner & Co.*, for *Ruddock, Middleton & Killin*, Great Yarmouth.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CARE OF THE ELDERLY

The Surrey Joint Liaison Committee—on which serve members of the county council, the South-West Metropolitan Regional Hospital Board, and the Surrey Executive Council—are to make a comprehensive re-assessment of the practical value of geriatric work in the county. A special sub-committee has been set up to assemble all possible information on existing services and facilities for the elderly and to make a realistic estimate of the extent to which these services fall short of what is reasonably necessary for the welfare of the elderly and, in the light of the facts which emerge, to formulate general principles for the guidance of the joint liaison committee in determining future policy on geriatric work.

COUNTY BOROUGH OF MIDDLESBROUGH: CHIEF CONSTABLE'S REPORT ON LICENSING MATTERS FOR 1956

Middlesbrough, on December 31, 1956, had 100 premises with an "on" and 78 with an "off" licence, an increase of two during the year. The method of police supervision of licensed premises was changed during the year. Formerly the duty was undertaken by two plain-clothes officers, but the chief constable decided that they could not give adequate supervision and he arranged that visits should be paid, and at fairly frequent intervals, by uniformed officers operating normally within the area in which the premises are situated. The change is considered to have effected an improvement.

Public houses were well conducted on the whole but it is noted that some licensees were too slow in clearing their premises at closing time. This is not in itself an offence, but it tends to encourage breaches of the licensing laws. More young people under 18 were found to be frequenting hotels for the purpose of drinking and licensees are urged to greater vigilance to ensure that drink is not supplied to those who are under age.

The chief constable considers that the only ground on which police should normally object to the grant of occasional licences and to extensions of permitted hours is that they have a reasonable belief that the function concerned will not be properly conducted. He is pleased to report that there was no instance, during 1956, of rowdyism on any such occasion.

The average number of prosecutions for drunkenness in Middlesbrough during the 10 years ending December 31, 1956, is 646. The 1956 figure was 620, against 563 in 1955. Fortunately, the number of prosecutions for "s. 15" offences dropped from 27 to 15. These resulted in 12 convictions and two acquittals, with one still awaiting trial.

In writing of registered clubs the chief constable states that it is very important for the committees and stewards of these clubs to appreciate the privileged position which they occupy compared with licensed premises. It is, therefore, all-important that they should comply strictly with the licensing laws. Any infringements of the law cannot be overlooked.

LINCOLN (LINDSEY) ESTIMATES AND ACCOUNTS, 1955–56 TO 1957–58

Lindsey county council contains at least one area where the ratepayers have forcibly expressed their disapproval of the rate increases proposed for 1957–58: we understand that 11 members of the Mablethorpe and Sutton urban district council have resigned in protest at the increase of 2*s.* 9½*d.* to 14*s.* 3½*d.* in the county precept. While the reasons prompting such action can readily be understood it is clear that the county councils and other local authorities making increased demands have no real alternative if services provided are to continue.

This is explained by Lindsey county treasurer, Mr. John Jolly, F.I.M.T.A., in his memorandum on the 1957–58 budget. While emphasizing that the continuing increase in the council's expenditure is bound to cause concern to all members of the council and ratepayers, he points out that there is no abatement of the demands of the average citizen for better schools, roads, health services, old people's hostels and other requirements. Even so, many desirable schemes have been excluded from the finally approved estimates because of financial repercussions. The demands of the ratepayers for increased expenditure combined with continuing inflation have increased the Council's budget to a figure of nearly £8 million. Mr. Jolly states that the need for a standstill on pay and other costs is a vital necessity to the nation and earnestly hopes that the Government will be able to stabilize costs so that a stable wages policy can be justified and maintained for some time to come. Nevertheless, he evidently foresees little chance of this policy being operated in 1957–58 because provision has been made in those estimates in certain cases where it is known that there is another pay award pending and he cautions his readers to remember when considering the size of the county's balances that no provision has been made for pay awards in a number of other estimates.

An interesting table is given showing that the overall increase in county council expenditure in eight years has been 118 *per cent.*: the increase for education is 164 *per cent.* (£4,400,000 will be spent on this service in Lindsey in 1957–58), for highways 100 *per cent.* (1957–58 expenditure £1,300,000), and for the remaining county services 59 *per cent.*

Lindsey has also suffered severely as a result of the rating revaluation and the new Rating Bill. The revaluation raised Lindsey's rateable value by 114 *per cent.* (chiefly arising from the rapid industrial development in Scunthorpe and the Humber Bank area) and in consequence the county lost more than half a million pounds in grant moneys. The effect of the Rating Bill, it is pointed out, will be to reduce the county's penny rate product for 1957–58 by £968 or 6¼ *per cent.* and in addition a further £90,000 of equalization grant will be lost. Roughly 1*s.* 5*d.* of the increase in the rate is due to the financial effect of the Rating Bill.

Mr. Jolly states that a minimum working balance of £332,000 (of which only £100,000 is represented by cash) is being provided, that rate income is being anticipated which is dependent on the valuations of certain industrial properties being sustained and that

the estimates do not contain any contingency items to meet further inflationary demands for pay and other costs: the increase in the precept is therefore a minimum.

Lindsey's dilemma illustrates that of local government generally: either rates must continue to go up or services and standards (including standards of living) must be cut. And apart from this the Government review of exchequer grants to local expenditure looms in the background.

The outlook for the Mablethorpe ratepayers, and indeed for all their brothers and sisters, is distinctly unpromising.

PERSONALIA

APPOINTMENTS

Mr. William Arthur Fearnley-Whittingstall, Q.C., has been appointed recorder of Leicester. Mr. Fearnley-Whittingstall, who is 53, was recorder of Grantham for eight years from 1946 and has been recorder of Lincoln since 1954.

Mr. G. T. Heckels, deputy clerk of Kent county council, has been appointed to succeed Mr. J. D. Scott as deputy clerk of the peace. Mr. Heckels, who was admitted in February, 1928, came to Kent from the city of Nottingham in 1934 and has been deputy clerk of Kent county council since 1954. He has been assisting in the work of quarter sessions for the last five years. By arrangement with the county magistrates, Mr. Gerald Bishop, the clerk of the peace and clerk of the county council, does not take an active part in the work of quarter sessions, and the county magistrates have decided to appoint a second deputy clerk of the peace who will also fill the vacant post on the council's staff of senior assistant county solicitor. Mr. J. H. Oldham, T.D., M.A., D.P.A., has been selected from a large number of applicants for this appointment. Mr. Oldham, who was educated at Haileybury and Cambridge, was admitted in 1937. He is at present senior assistant solicitor to Warwickshire county council and previously held legal appointments with Middlesex and East Suffolk county councils.

Mr. Albert Bleasby, at present deputy town clerk of the city of Chichester, has been appointed deputy town clerk of the city of Lancaster. Mr. Bleasby, who is aged 30, is married with one child. He holds the degree of Bachelor of Law of Leeds University, and has been deputy town clerk of Chichester for 2½ years. His previous appointments have been those of assistant solicitor at Barnsley, Kettering and Bridlington. Mr. Bleasby will take up his new duties early in May.

Mr. Glyn Clemens Jones, LL.B., has been appointed deputy town clerk of the borough of Watford. The vacancy was caused by the resignation of Mr. G. Salter Davies, M.A., on the grounds of ill health, after 27 years' service. Mr. G. C. Jones is at present deputy town clerk of the borough of Chatham, Kent.

Mr. David Redmore Dealler has been appointed an assistant solicitor in the office of the town clerk of the city of Rochester, Kent, Mr. Philip H. Bartlett. Mr. Dealler served his articles with the clerk to Bucks. county council and is at present assistant solicitor to Wanstead and Woodford, Essex, corporation. Prior to that he was assistant solicitor to Tynemouth county borough council.

RETIREMENTS

Sir Arthur Binns, chief education officer for Lancashire, has retired. Sir Arthur came to Lancashire 12 years ago and since then had given outstanding service to education in general and Lancashire in particular, especially during the important years of bringing into effect the improvements envisaged in the Education Act, 1944. Under Sir Arthur's guidance Lancashire had realized the building of 215 new schools and 64,333 new places had been added. His re-organization of divisional administration in Lancashire had led to the cost per 1,000 population in the county being well below the average for the English counties.

Mr. M. V. Evans, coroner for East Denbighshire, is to retire on March 31 next. He joined the late Mr. Llewelyn Kenrick, former coroner, in 1906 and became deputy coroner in 1924. He was appointed acting coroner in 1930 and on Mr. Kenrick's death in 1933 he became coroner. Mr. Evans in the past 30 years has conducted somewhere in the region of 2,500 inquests. Mr. Evans will continue as clerk to Ruabon magistrates.

OBITUARY

Mr. Ernest Henry Bullock, the town clerk of Hull, has died, the day after his 46th birthday. Mr. Bullock, who had been town clerk for 11 years, leaves a widow and two young children. He had been ill for some time. Mr. Bullock, who was educated at Riley High School, Hull, was only 34 when in September, 1945, he was appointed in succession to Mr. Alexander Pickard, with whom he had completed his articles.

NOTICES

The next court of quarter sessions for the borough of Maidstone will be an additional one to be held on Friday, March 29, 1957, at the Court House, Palace Avenue, Maidstone, at 10.45 *a.m.*

The next court of quarter sessions for the county of Kent will be the East Kent Easter sessions to be held on Monday, April 1, 1957, at the Sessions House, Canterbury, at 10.45 *a.m.*

The next court of quarter sessions for the county of Pembrokeshire will be held on Monday, April 1, 1957, with the adjourned sessions on Monday, May 13, 1957.

The next court of quarter sessions for the county of the Isle of Ely will be held on Wednesday, April 3, 1957, at Ely.

The next court of quarter sessions for the county of Devonshire will be held on Wednesday, April 3, 1957, at 10.30 *a.m.*, with the adjourned sessions on Tuesday, May 14, 1957, at 10.30 *a.m.*

The next court of quarter sessions for the county of Derbyshire will be held on Wednesday, April 3, 1957.

The next court of quarter sessions for the county of Cardiganshire will be held on Thursday, April 4, 1957, at the Town Hall, Lampeter.

The next court of quarter sessions for the county of Cheshire will be held on Tuesday, April 9, 1957, at the Sessions House, Knutsford.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, March 14

RATING AND VALUATION BILL—read 3a.

HOUSE OF COMMONS

Tuesday, March 12

HOUSE OF COMMONS DISQUALIFICATION BILL—read 3a.

Thursday, March 14

CONSOLIDATED FUND BILL (No. 2)—read 1a.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MAGISTRATES' COURTS BILL

Four Amendments were made to the Magistrates' Courts Bill during the Committee stage in the House of Lords.

On cl. 2 (Proof of identity of driver of vehicle), Lord Lucas of Chilworth moved the deletion of the proviso. He said that the whole object of the Bill was to simplify the procedure, to make it cheaper, and not to waste the time of the police. The Bill provided a simple procedure by which the identity of the driver of the vehicle could be taken as proved if the individual who was driving the vehicle admitted in writing that he was the driver. But the proviso to cl. 2 stated:

> " Provided that this section shall not apply in relation to any offence mentioned in the Fourth Schedule to the Road Traffic Act, 1956 (which relates to offences in respect of which disqualification for holding, or endorsement of, a driving licence may be ordered)."

Lord Lucas said he could not see the sense in that proviso. If he were summoned for leaving his motor car for an undue length of time by the kerbside, thereby causing an obstruction, he could write to the police and say that he was guilty because he was the driver of that vehicle. But if on the same day he was stopped for driving at 35 m.p.h. in a 30 m.p.h. limit area, and he received a summons from the police, he could not by writing them a letter prove to them or satisfy them that he was the driver of the vehicle.

The Lord Chancellor gave his approval to the Amendment which was accepted.

The following new clause was proposed by Lord Merthyr:

> " Mitigation of penalties.
>
> Section 27 of the Magistrates' Courts Act, 1952 (which confers upon a magistrates' court certain powers with respect to the mitigation of penalties in the case of offences under any enactment passed before the commencement of that Act) shall have effect, and be deemed always to have had effect, as if in subs. (1) of that section for the words ' passed before ' there were substituted the words ' whether passed before or after '."

Lord Merthyr said that s. 13 of the Criminal Justice Act, 1948, gave power to any court to impose a fine for felony. Following upon that, s. 27 (1) and (3) of the Magistrates' Courts Act, 1952, gave to magistrates' courts the power to fine for misdemeanours in the case of offences " under any enactment passed before the commencement of this Act." So from 1879 to 1952 magistrates had power to impose a fine for misdemeanours, or as the case might be, to reduce the maximum fine for misdemeanour in any case brought before them. But because those words were inserted it followed that if a punishment was imposed under a statute passed since 1952, unless there was an expressed power to fine, the magistrates could not now impose a fine whether they wanted to or not.

The Lord Chancellor accepted the Amendment which was then approved.

Later, Lord Merthyr moved a further Amendment which will bring this new clause into force at once. Another Amendment moved by Lord Merthyr provided that the remainder of the Act should come into force three months after the passing of the Act.

Originally the Bill had provided that the Act should come into force two months after it was passed. Lord Merthyr said it had been represented to him that two months was rather too short a time. The Bill had to percolate down from Parliament to all the justices' courts in the country. Every justices' clerk had to get a copy of the Bill, digest it, act upon it and pass it on to his justices. Thousands of magistrates had to get to know the new Bill so that they might act upon it properly. He suggested that three months would be a fair amount of time.

Supporting this proposal, Lord Winster said that after the Bill became an Act a great deal of work would have to be done. Rules of Procedure would have to be made and forms would have to be printed. He felt that for all those reasons three months at least was desirable.

The Amendments were accepted by the Lord Chancellor and approved.

The Bill now awaits report and Third Reading in the House of Lords before going to the Commons.

PRISON PROBLEMS

During a Commons debate on prisons in Committee of Supply, the Secretary of State for the Home Department, Mr. R. A. Butler, said that the problem of prison administration was being tackled by the Government from two points of view: first, to increase the accommodation; and, secondly, to see whether there were any means of reducing the inflow of prisoners.

He recalled that his predecessor had asked the Advisory Council on the Treatment of Offenders to consider the various suggestions which had been made to him for reducing the number of short sentences of imprisonment. The Council had appointed a subcommittee which would report to a full meeting of the Council on May 3, which would be quite soon. He would study the Council's recommendations and do what he could to carry out any recommendations it made.

But if they were to make a substantial contribution to the problem of prison accommodation, they had to look beyond the question of short sentences. There was no doubt that while short-term prisoners placed a heavy burden on the staffs of local prisons and so contributed much to the difficulties which sprang from shortages of staff, they did not occupy a great deal of accommodation. In 1954, for example, persons serving terms of less than three months accounted for less than one-twentieth of the daily average population in all the commissioners' establishments.

They would, obviously, welcome any recommendations to reduce the number of short-term sentences, but they also recognized that what would contribute most to a reduction of overcrowding was not so much the reduction of the number of short sentences, but that of long sentences. A preliminary statistical survey on the basis of figures available in 1955 suggested that as compared with 1938, an increase of about 6,000 in the prison population might have been due to an increase in the numbers of persons convicted and of about 3,000 to an increase in the length of sentence passed by the higher courts.

That was a situation which derived from the sentencing policy of the courts and involved considerations which were the concern of the judiciary and not of the Executive, although the Executive certainly had a distinct concern with the effects. Obviously, it would take time to work out, but there were ways in which the Executive, within its proper limits, might well seek to collaborate with the judiciary in that all-important question of sentencing policy.

They needed, therefore, to find out by systematic research much more than they knew about the results of the various methods of treatment which were available to the courts, and to place that knowledge at their disposal. They needed also to put themselves in a position to furnish the courts with the fullest possible information about the offenders before them so that in all proper cases they might be able to select the treatment appropriate to each individual on the basis of an expert diagnosis of his history and personality. If they were to do that, which was exploration work, they needed the proper tools.

The first of those in order of importance was the remand centre for young people, for which provision had been made in the Criminal Justice Act, 1948, with which should be connected a similar centre for adults. It was very wrong that so many young people should come into their local prisons, which, as they were now, could make no proper provision for them, whether it was simply for safe custody or for the more constructive purpose of providing the courts with information about them; whereas in a remand centre they would have suitable premises in no way connected with a prison, in which an expert and specialized staff would have every facility for making a complete examination of the person or persons and giving full advice to the courts. Such remand centres would not only serve to keep these young people out of prison but would be real centres of research into the broader question of juvenile delinquency.

There should be an attached centre for adults. What they had in mind was an adjoining centre for adults, which would be absolutely separate from the remand centre for the juveniles but would use the same specialized staff. The same facilities would be available according to their plan, both for the unconvicted and for the careful classification of many of those who had been convicted—an important work which could not be done properly with the present facilities of local prisons.

In that way several purposes would be served. Many young people would be saved altogether from an unnecessary taint of prison life, and the courts would have really valuable help in deciding on sentences. The classification and treatment of prisoners would be better based, and the local prisons greatly relieved both in their accommodation and the pressure on their staffs. He hoped to be in a position to start work on the first of those centres next year.

REVIEWS

Trial by Jury. By Sir Patrick Devlin. London: Stevens and Sons, Ltd. Price 15s. net.

The Hamlyn Lectures have established a fine reputation for learned exposition and effective oratory. This book contains the eighth series of lectures and it amply confirms the wisdom of selecting Mr. Justice Devlin to deliver them.

We have no hesitation in acclaiming this analysis of trial by jury as outstanding for its breadth of view and historical insight. At the outset of his far-ranging journey the learned Judge observes that "trial by jury is not a subject on which it is possible to say anything very novel or very profound"—but we venture to doubt whether many understand the essence of the English jury system as thoroughly as Sir Patrick Devlin. There is something very stirring about the organic character of this ancient institution. We can so easily take it for granted, yet, of all the barriers shielding liberty from the encroachments of arbitrary rule, the jury system is at once the most fundamental and the one most easily linked with the day-to-day life of the community.

It is easy enough to note the more obvious of the jury's shortcomings, but Sir Patrick's awareness of these never leads him to doubt the essential strength of the system: "it is . . . an insurance that the criminal law will conform to the ordinary man's idea of what is fair and just." Some weaknesses may follow from this: "Juries are not often too tender to the wicked but they sometimes are to the foolish. I think that a juryman, if he can visualise the possibility of finding himself in the same situation as the man in the dock, finds it very difficult to be firm; it is an inevitable defect of the system that jurymen are not practised in detachment. It may be, therefore, that the jury system means that some good and necessary laws are only weakly enforced. Likewise, democracy may mean that some good and necessary measures of government are not taken when they should be. There are no freedoms to be got without payment."

That is a good example of Sir Patrick's easy capacity to relate the particular to the general, to see both sides of a picture in a true perspective. All through his argument we are shown the jury as a microcosm of society, and we are brought clearly to see that no jury could ever function as an automaton of wisdom.

But perhaps the most striking lectures are the fourth and fifth, which deal with the control of the jury. "What does a Judge do?" "To what extent, and in what manner can he influence a jury." "What is a question of law, and what a question of fact?": those who have posed these questions—and who has not?—will find them brilliantly answered here; especially revealing is the trail blazed through that confusing hinterland wherein fact and law intertwine with sometimes baffling complexity. This is a section of great moment for magistrates, who of course so often fulfil the function of juries.

It is the object of the Hamlyn Trust that "the common people of the United Kingdom may realize the privileges which in law and custom they enjoy in comparison with other European Peoples, and realizing and appreciating such privileges may recognize the responsibilities and obligations attaching to them." This series of lectures amply fulfils this worthy aim.

The Scientific Investigation of Crime. By L. C. Nickolls, M.SC., A.R.C.S., D.I.C., F.R.I.C. Director, The Metropolitan Police Laboratory, New Scotland Yard. London: Butterworth & Co. (Publishers) Ltd., 88, Kingsway. W.C.2. Price 50s. net, postage 1s. 6d. extra.

In a foreword Sir John Nott-Bower, Commissioner of Police of the Metropolis, refers to Mr. Nickolls' distinguished academic career, and his great experience in forensic science as giving his work authority. This recommendation is amply justified by a book which is carefully planned, clearly expressed, copiously illustrated and amply documented.

Criminals today often use scientific methods in furtherance of crime and the law counters their activities by the skill and knowledge of scientists. Often it is scientific evidence that helps the police to find out who committed the crime and then to provide much of the evidence that leads to his conviction. In his introduction Mr. Nickolls points out that the evidence of an eye-witness generally regarded as the best evidence may be erroneous either as a result of human error, or of malice or misplaced loyalty. The direct evidence of the eye-witness may be tested by the evidence of other eye-witnesses but a more convincing test is that provided by the circumstantial evidence. Circumstantial evidence has, as the author observes, always been welcomed in courts of law. By the numerous instances which Mr. Nickolls gives, and which make the book thoroughly interesting reading, it is made plain how circumstantial evidence given by an expert may demonstrate guilt, or sometimes innocence beyond all reasonable doubt. The advance in scientific knowledge and the development of new scientific instruments have proved of immense service in the investigation of crime and in supplying the most convincing circumstantial evidence. There are now seven forensic laboratories engaged in this work. They are staffed by scientists appointed by the Home Office, and they are completely independant of the police authorities. They are quite impartial, and not infrequently the result of their investigation is that no charge is preferred.

In a book of this kind there is necessarily a great deal of technical description of apparatus and methods. This is so presented that police officers engaged in criminal investigation will find it of the utmost value, and even readers who are not concerned with these things except as being interested in crime and criminals generally will like to learn how ultra violet and infra red and various methods of photography can discover what would otherwise lie hidden.

The importance of having the expert on the scene of the crime has often been demonstrated, and instances are given by Mr. Nickolls. There is, for example, the story of a bogus burglary staged by a butler in which the scientist noticed that the blood stains were all smears and there were no drops, even where the butler said he had lain unconscious, and the vase with which he said he had been struck could not have inflicted his injuries. The butler confessed.

An observant police officer noticed a number of small circular silvery discs on premises that had been broken and entered. These were submitted for scientific investigation and were found to be flakes of skin like dry scabs. The officer knew a local thief suffering from psoriasis, whom he saw and told what he had found. The man admitted the offence and was convicted.

The microscope often helps in the identification of property, or supplies evidence creating suspicion upon which the police can pursue enquiries. Thus, stolen wheat must be almost impossible to identify of itself, but an examination of the weed seeds present may enable the suspect sample to be linked with the remainder of the wheat. Small fragments of wood, or even sawdust, can provide strong clues.

A whole chapter is devoted to bloodstains, which so often provide important evidence in criminal cases. Science has made great strides in the method of examination and grouping of samples of blood. Some excellent examples are given showing how the scientist can help not only to convict the guilty but also to remove suspicion from the innocent. Here is one example. A number of prisoners-of-war were suspected of stealing sheep and slaughtering them for food. A number of stains of blood were found on the floor of their hut. This blood proved to be rabbits' blood. No charge was preferred. Another chapter of great interest deals with firearms and ammunition and shows how the scientist can draw inferences, beyond dispute, about the kind of weapon used and the distance from which it was fired at the victim.

The book is beautifully printed and illustrated by photographs and diagrams on excellent paper. These are small matters in comparison with the work itself, but they make their appeal to any reader who appreciates a good book well turned out.

Paterson's Licensing Acts. 65th Edition. By F. Morton Smith, B.A. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. Price 65s. net, postage 1s. 9d. extra.

Paterson comes again in a new edition, presenting up-to-the-minute licensing law in good time for brewster sessions of 1957. As usual, the most liberal interpretation is placed on the scope of its subject matter, and we find not only the law of everything touching intoxicating liquor licensing, the licensing of theatres, cinemas, and premises used for music and dancing, but also there is included all the collateral law which directly concerns the owner or occupier of premises licensed under one of these heads. For instance, as a public house may be "catering premises" within the meaning of the Food and Drugs Act, 1955, there is included the relevant sections of this Act with the dependent Food Hygiene Regulations, 1955.

Other new statutes incorporated in the work are the Licensing (Airports) Act, 1956, the Occasional Licenses and Young Persons Act, 1956, and the Hotel Proprietors Act, 1956: also included are the Cinematograph (Children) (No. 2) Regulations, 1955, and the revised model conditions recommended by the Home Secretary as appropriate to be attached to licences under the Cinematograph Acts.

Case law is brought up to date and, as is usual in *Paterson*, cases are given rather fuller treatment than is usual in an "annual," thereby reducing to a minimum the necessity for consulting reports of decided cases; a feature which lightens the troubles of an advocate appearing before a county brewster sessions far removed from the nearest law library. Another well-established aid to the advocate "on his feet" is the excellent index: appended to 1584 pages of text is an index of 240 pages. Mr. Morton Smith has done a thorough job.

Thus *Paterson* is deservedly praised for yet another year. For 84 years and through 64 editions it has stood as the pre-eminent work in the field of licensing law. We know it and we rely upon it.

UNSPORTING

A tacit acceptance of, if not a firm belief in, the laws of Sympathetic Magic seems to be as widespread today as when the late Sir James George Frazer wrote his monumental work *The Golden Bough*. In Chapter III of his first volume he sets out what he calls the Principle of Similarity, *viz.* the belief that like produces like, or that an effect resembles its cause—"the magician infers that he can produce any object he desires merely by imitating it." Hence comes the persistence of the idea throughout history, from the earliest recorded episodes in Ancient Egypt, Babylon, India, Greece and Rome, to the happenings of the present day among the aborigines of Australia, Africa and North America. Similar things (be it whispered) are still known to occur in remote parts of Scotland, and even among the white population of the United States and many European countries. In primitive communities these practices are known as witchcraft; among the members of more complex civilizations they are dignified by the psychological expression "wishful thinking." The difference, however, is one of degree and not of kind.

The technique takes similar forms in different quarters of the world. In some parts of Malaya, writes Frazer:

> "the form of the charm is to make an image of your enemy in wax: pierce the eyes of the image, and your enemy is blind; pierce the stomach, and he is sick; pierce the head, and his head aches; if you would kill him outright, transfix the image from the head downwards, enshroud it as you would a corpse, pray over it as if you were praying over the dead; then bury it in the middle of a path where your victim will be sure to step over it."

This kind of practice has been known in every age; in England the State Trials, as late as the eighteenth century, testify to the prevalence of the belief in witchcraft and all its works.

Contagious Magic, as Frazer denotes it, proceeds upon the notion that things which have once been conjoined, or in contact, remain ever afterwards in such a sympathetic relation that whatever is done to the one must similarly affect the other—even though they have become dissevered and are situate widely apart. In 1890 Frazer could still write:

> "Thus, in Suffolk, if a man cuts himself with a bill-hook or scythe, he always takes care to keep the weapon bright, and oils it to prevent the wound from festering."

And he gives examples of primitive peoples who eat certain animals in order to acquire desirable qualities with which they believe them to be endowed; and who abstain from eating other animals lest they should acquire undesirable qualities with which they are thought to be infected. "In Madagascar no soldier should eat an ox's knee, lest, like an ox, he should become weak in the knees and unable to march."

Consciously or unconsciously, such ideas have been echoed in a recent letter to *The Times*. An article on Landseer had commented upon the placid posture of the bodies, and the urbane expression on the faces, of the lions in Trafalgar Square; this has been taken up by a correspondent who asks:

> "Can it be that our present lamentable self-deprecation is psychologically connected with the placidity of the lions? Might it not be a good idea to have four really ferocious lions erected to act as a counter-effect?"

Among adolescents (of all ages) in the United States such wishful thinking manifests itself in the character known to the comic strips as Superman. A sort of cross-bred creature between the Tarzan of early film-days and the husky lumps of brawn and muscle which are the female teenager's ideal in Hollywood today, Superman goes about not so much as a knight-errant as a sort of world-policeman. Attired, by some nebulous association of ideas, in a costume vaguely resembling the tunic of Classical Greece, he hurtles about the earth, or even flies (at will) through the air, pursuing sinister characters of a Slavonic or Mongolian cast of countenance, whom he eventually traps and pulverizes after the fiercest battles against overwhelming odds. He is armed with nothing so crude as a revolver, machine-gun or hand-grenade; all he has to do is to touch a switch and destroy his enemies with the Death-Ray—an appliance which seems to have outmoded all the apparatus of atomic and nuclear science. Millions of apparently adult Americans revel in this sort of dream-fantasy, which gives them, no doubt, a vicarious satisfaction; the symbolical, psychological or magical destruction of their ideological enemies (on paper), by a being supposedly 120 *per cent*. American, is a modern development of the practices that Frazer noted with such industrious care.

How near, in fact, to the surface of the human consciousness are these so-called primitive beliefs is evidenced by a recent news-item, also in *The Times*, from Southern Rhodesia. The Salisbury and District African Football Association has recently held its annual meeting, at which it was regretfully observed that the team, last season, had lost all its football trophies to other towns. The beginnings of a defeatist mentality are not, however, to be cured (as they would be elsewhere) by negotiating the transfer from another team of a stalwart centre-forward or inside-right; there is a far more foolproof method. Witch-doctors, like other members of the medical profession, must keep their methods up to date; and the one who offered his services to this disgruntled football association "is reputed to have charms capable of making any team win a match." The management engaged him on the spot for a fee of £10, which seems extremely reasonable; he does not appear even to have been required to give a demonstration of his powers before the contract was signed. It is to be expected, if he proves successful, that a brisk business may be done in transfers at fees equivalent to, or even exceeding, those customary among professional footballers in the Mother Country.

Understandingly, nothing has yet been said about this expert's working methods. Does he carry out some mysterious ritual with a couple of human thigh-bones, surmounted by a pelvis, to represent the opposing goal, and practise rolling a skull through this symbolical structure, to the recital of a potent charm? Or does he take a leaf out of Frazer's book, disguise himself as a *restaurateur* on the "away" ground, and feed the other team on ox's knees *sautés*? Or, finally, does he resort to a good, old-fashioned and well-proven practice, by fashioning 11 little waxen images, daubing them with the enemy-colours, and sticking them with pins or roasting them, one by one, over a slow fire? Time alone will show; meanwhile the observant reader can remind himself once more that—

"One touch of nature makes the whole world kin."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Consent of husband of mother of infant born after divorce.*

I have read your reply to P.P.1 at 120 J.P.N. 527, with interest, as I found it necessary to advise my justices to adjourn an application on Wednesday last on almost similar facts. In my case another man had registered the birth jointly with the wife and he was made a respondent. The wife and this man had been living together for some time and he had in fact maintained both wife and child.

My experience with this type of application is that the husband always refuses to sign a consent as the "father." No other of the clauses in a form of consent can be used.

Could the wording of the consent be altered to read "the father by presumption of law but not the natural father"?

Something like this might help us overcome our difficulty in this type of application and obviate the difficult issue of non access.

ROWELL.

Answer.

A form of consent modified as suggested could not, in our opinion, signify the consent of the parent which is required by s. 2 (4) of the Adoption Act, 1950.

Unless the court is satisfied by evidence that the divorced husband of the mother is not the parent of the infant his consent must be obtained, or dispensed with in accordance with s. 3 *ibid.*, and if a document is to be relied upon as signifying his consent it should be in the form prescribed by the Adoption of Children (Summary Jurisdiction) Rules, 1949 and 1952, without modification.

2.—Gaming—*Club premises used for betting—Proceedings against committee and secretary—Betting Act*, 1853, *ss.* 1 *and* 3.

I am contemplating taking proceedings in respect of betting in an unincorporated registered club. Briefly the facts are that on three days when horse-racing was in progress one room was used by a bookmaker and his assistant solely for the purposes of ready money betting with club members, which is admitted.

I propose to proceed against the bookmaker for "being the person using a room in a certain house, situate at —— street, did use the said room for the purpose of betting with persons resorting thereto"; and against his assistant for "assisting in conducting the business in a room in a certain house, situate at —— street, then used for the purpose of betting with other persons resorting thereto, contrary to s. 3 of the Betting Act, 1853."

The committee of management and the secretary all admit that they knew of the use of the room by the bookmaker and his assistant, as mentioned, and some of them say that the bookmaker paid the club for the privilege, but none of them was on the premises at the time of the police visit, with the exception of one committee-man, who was in another room.

I should like to take proceedings against the members of the committee and the secretary, but am in some doubt as to the appropriate charges.

Page 455 of the 14th edn. of *Oke's Magisterial Formulist*, at No. 12, headed "Persons having the management of room," contains an information "had the care or management of (or was assisting in conducting the business of) a certain house (or office, or room in a certain house, or place), situate at —— street, then opened, or kept, or used for the purpose of persons betting with other persons resorting thereto, contrary to s. 3 of the Betting Act, 1853."

According to text books, which refer to *R.* v. *Cook* (1884) 13 Q.B.D. 377; 48 J.P. 694, it is the care or management of the business, not the care or management of the house, and the business is the business of a betting house-keeper.

The difference in wording of ss. 1 and 4 on the one hand, and s. 3 on the other, is pointed out, and the fact that in ss. 1 and 4 it is clearly the care or management of the house which is the guilty course of conduct, also that the word "of" occurs after management in s. 3 but not in the other sections. It is suggested that it could be argued that s. 3 ought to be read in the light of s. 1 and that the decision in *R.* v. *Cook*, *supra*, may some day have to be reconsidered.

I am unable to reconcile *Oke's* information, given above, with s. 3 of the Betting Act, 1853, which reads: "Any persons having the care or management of or in any manner assisting in conducting the business of any house, etc., opened, kept, or used for the purposes aforesaid," which, in view of this, would seem should read "Any person having the care or management of (or assisting in conducting) the business of any house, etc."

Section 2 of the Betting Act, 1853, makes a betting house a common gaming house within the meaning of the Gaming Act, 1845, s. 4 of which provides that "The owner or keeper of any common gaming house, and every person having the care or management thereof, . . . shall, on conviction . . .", which would appear could include the members of the committee and the secretary, so that they could each be proceeded against because they ". . . had the care or management of a certain common gaming house, situate at . . . ., contrary to s. 4 of the Gaming Act, 1845."

I have also considered whether the members of the committee and the secretary could be said to be occupiers of the room, in which case it would seem that they could each be proceeded against as "being the occupier of a certain room in a certain place . . . knowingly and wilfully did permit the said room to be used by certain other persons for the purpose of betting with persons resorting thereto, contrary to s. 3 of the Betting Act, 1853."

I shall therefore be pleased to have your observations, and the benefit of your opinion as to what charge (if any) could properly be preferred against the members of the committee and the secretary. HEGRIM.

Answer.

There seem to be various possibilities here. The committee and secretary could be proceeded against for keeping a common gaming house, by virtue of s. 2 of the Betting Act, 1853. Since they all admit that they knew of the use of the room by the bookmaker, they could also be proceeded against for aiding and abetting him. On the whole, we prefer the suggestion in our correspondent's penultimate paragraph, as we think that it could be successfully argued that they were the occupiers of the room. In this case, the summons would read: "did permit the said room to be used for the purpose of someone betting with persons resorting thereto." This is in accordance with a dictum of Avory, J., in *Daniels* v. *Pinks* (1931) 95 J.P. 23, a case which concerned a members' club where there were also alternative charges under s. 4 of the Gaming Act, 1845.

3.—Landlord and Tenant—*Small Tenements Recovery Act*, 1838—*Allowing warrant to lapse.*

I read with interest your comments at 120 J.P.N. 752 on the ejectment procedure under the Small Tenements Recovery Act, 1838, and the absence of any discretion vested in the court when proceedings are taken by a local authority. Whilst I agree with you, there is an aspect of this matter on which I should be interested to have your views. That is, the local authority who apply for a warrant of ejectment merely to enforce rent arrears, never using or intending to use the warrant otherwise than as a "big stick" to reclaim the arrears of rent and, the rent arrears being paid, allow the warrant to lapse, Where this has been done several times would you take the view that the justices have a discretion to decline to entertain the application of the local authority on the ground that it is an abuse of the process of the court or, alternatively, can the court insist that once they have granted the warrant it must be executed? ALLAS.

Answer.

At 117 J.P.N. 271 we said that in our opinion it was an abuse of process when, in agreement with the clerk of the local authority, the clerk to the magistrates held the warrant back from the police to whom it is addressed. We doubt whether a landlord has at that stage any *locus standi* to delay its execution. The action we suggested in that answer will put an end to abuses. It cannot, however, be regarded as an abuse for the landlord (local authority or other) to resort to the Act of 1838 for the sake of getting paid—there are tenants who are not worth distraining on or suing. If eviction or the prospect of immediate eviction stimulates the ex-tenant to produce the arrears, and then the local authority, having been put into possession under the warrant, chooses to grant a fresh tenancy (even unto seventy times seven) the magistrates can not for that reason refuse process on the 491st occasion. In our experience the cases, in which magistrates rightly object to being treated as a piece of rent collecting mechanism, come about from laxity, such as allowing a warrant (even at the landlord's request) to remain unexecuted until it lapses.

4.—Magistrates—*Practice and procedure—Remission of fees.*

It is the usual practice of justices in the several petty sessional divisions of my authority, when they consider the course appropriate, to remit the court fees. The amount of the fees remitted in respect of each case is recorded in the court register and certified by the adjudicating magistrates.

During a recent examination of the fines and fees account of one division, attention was called to this practice and the justices'

clerk was informed that if fees are remitted they become payable by the prosecutor in summary offences and by the county in indictable offences dealt with summarily. This appears to be contrary to s. 113 of the Magistrates' Courts Act, 1952, and usurps the authority of the magistrates who have heard and considered all the relevant facts and circumstances.

Your valued opinion on this matter will be appreciated.

JUSTICE.

Answer.

If a fee is remitted under s. 113, *supra*, it is no longer payable by anybody, and we do not know on what authority the justices' clerk was informed as stated in the question.

In indictable cases tried summarily the fees payable to the clerk can be included in any order made under the Costs in Criminal Cases Act, 1952, s. 5, for payment out of local funds of the costs of the prosecution and if such an order is made the local authority has to pay.

5.—National Parks and Access to the Countryside Act, 1949—*Extinguishment of footpath—Expenses.*

A footpath is no longer needed for public use. At the request of the owner the council make an extinguishment order under s. 43 of the above Act, and this is subsequently confirmed after local inquiry by the Minister.

1. Do you agree that the costs of obtaining the order cannot be recovered from the owner;

2. Would a written undertaking to pay the costs be legally enforceable?

CORLIR.

Answer.

1. We agree.

2. We think not. The council have a duty to consider what is "expedient," having regard to public requirements, and sch. 1 provides for quasi-judicial procedure. They cannot, in our opinion, stipulate that payment of the expenses they may incur shall be a condition of their considering the case.

6.—Rating and Valuation—*Charity—Dispute about exemption—Procedure to determine dispute.*

With regard to P.P. 6 at 120 J.P.N. 765, have you overlooked the right of appeal to the next practicable quarter sessions under s. 4 of the Poor Relief Act, 1743? Some appeals have already been heard by quarter sessions under this section.

DIRER.

Answer.

We had not overlooked s. 4 of the Act of 1743. *Ryde* says at p. 184 that procedure thereunder "may be difficult though not perhaps impossible." He goes on to say that its availability may depend upon how the rate is made, and to recommend the other procedures. which we suggested at p. 765. Some months ago, when we answered the original query (by post before it was printed) it looked as if a decision by quarter sessions might be challenged by *certiorari*, but the procedure can now be taken as established.

7.—Road Traffic Acts—*Provisional licence holder—Proof of type of licence by certificate signed by an officer of the licensing authority.*

I note with interest your comments in P.P. 9 at 120 J.P.N. 827.

Surely it would be sufficient to obtain a certified extract of the registration documents of the council who issued the driving licence, under the Evidence Act, 1851, s. 14, and the Motor Vehicles (Driving Licences) Regulations, 1950, and for the officer who stopped the vehicle to produce this certificate to the court.

As this is the procedure adopted at the court at which I prosecute, I would appreciate your views as to whether this procedure is correct.

ISLO.

Answer.

We have been unable to find any authority or decision on the point, but we do not think that the register of licences is a public document within the definition given by the Judges in various cases, beginning with *Sturla* v. *Freccia* (1880) 5 App. Cas. 623 at p. 643. We think, therefore, that s. 14 of the Evidence Act, 1851, does not apply to authorize the production of a certified extract as suggested in the question. In any event it would be necessary to prove that the defendant was the person referred to in any such extract.

8.—Road Traffic Acts—*Requirement to produce licence for endorsement after conviction and sentence—Under which section?*

I am much obliged by your answer at p. 92, *ante*.

Apparently, however, quarter sessions took the view that the wording of s. 33 (5) of the 1934 Act repeals s. 8 (2) of the 1930 Act in respect of licences under part 1 of the 1930 Act, and that therefore the conviction for failing to produce (this being an ordinary driver's licence) ought not to have taken place under the repealed section.

My difficulty, however, is still the correct interpretation of the last seven lines of note E at p. 2151 of the 88th edn. of *Stone* where the words occur "after conviction and before addressing its mind to the question of penalty."

It seems to me that these words are, in a sense, exclusive, and therefore mean that the court cannot make a formal requirement once the penalty has been imposed.

It follows that if a formal requirement ought not to have been made in this case, the defendant has not failed to comply with a requirement, from which it follows that the licence did not become suspended by reason of the requirement, since the requirement was a nullity, and if it did not become suspended, of course, he has committed no offence by subsequently driving.

I would be most obliged if you could deal with that specific note in *Stone*.

KAFELD AGAIN.

Answer.

We are interested to learn the reason which led to the decision of quarter sessions, but with the very greatest respect to them we venture to differ from them. In our view what s. 33 (5) of the 1934 Act does is to prevent a defendant from being prosecuted twice, once for failing to produce the licence after conviction and before sentence and then again, after sentence, for failing to produce it for endorsement. But, as we read s. 33 (5), unless there has been a requirement by the court, after conviction and before sentence, the *licence* has not become one to which s. 33 (5) applies, and when, after sentence, the licence is required, for the first time, to be produced for endorsement the requirement is under s. 8 (2) of the 1930 Act. Section 33 (5) refers to "a *licence* to which they apply" and not to "a person who is convicted of an *offence* to which they apply"—the word "they" meaning subss. (3) and (4).

The note in *Stone* may well be based on the view we have expressed. The other view is, of course, that in the case of the offences to which s. 33 (3) relates any requirement to produce a licence, after conviction (even if not made until after sentence and only for the purpose of endorsement), is a requirement under s. 33 (3).

In our opinion it does not matter, for the purpose of the proceedings for driving without a licence, which view is correct. A defendant cannot successfully argue that he is under no obligation to produce his licence for endorsement and that, without doing so, he may continue to drive. He can be summoned, we think, in the alternative, one summons alleging that the suspension is because of s. 8 (2) (*a*) and the other alleging that it is because of s. 33 (4). If the court hears the first and thinks it cannot be supported then the other will remain to be heard.

9.—Water—*Domestic supply—Effect of increased valuation for rating.*

It is the policy of the local authority, who are also the water supplying authority, that a metered supply of water shall be given only when industrial premises are involved which actually utilize water in the course of manufacture. All other premises taking a domestic supply are assessed by means of a water rate. It will be appreciated that supply to offices comes under the category of domestic supply. Since the re-valuation for rating, the result has been that office accommodation, which is of course assessed on current values, has a heavy contribution to make under the water rate, as compared with houses, which are rated to 1939 values, and use more water than do the offices, as a general rule. This is felt by clients of ours to be inequitable, and they are anxious to take whatever steps are available to obtain either a reduced rate of charge in respect of office accommodation or to obtain a metered supply. We are in some doubt as to the procedure to be adopted; s. 126 (4) of the Public Health Act, 1936, might be invoked, though we feel it was directed rather at the omission of an authority to make charges than at the making of excessive charges. We understand that a circular was sent by the Minister of Housing and Local Government to local authorities in connexion with the re-valuation, which pointed out the anomaly of charges to water rates for office premises as compared with other domestic supply users, and suggested that authorities should make use of their powers to make special charges or charge by meter. We should appreciate your advice and assistance as to the course which should be adopted to obtain some alleviation for our clients.

PREED.

Answer.

We agree that s. 126 (4) of the Public Health Act, 1936, is not appropriate and there is no means of compelling the council to charge by meter. Pressure to induce action on the lines of the circular is the only available remedy.